
UTAH LABOR COMMISSION

JOHN WISNER,

Petitioner,

vs.

SALT LAKE COUNTY PARKS,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

ORDER OF REMAND

Case No. 07-0010

Salt Lake County Parks ("SLCP") asks the Utah Labor Commission to review Administrative Law Judge Hann's award of benefits to John Wisner under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

On January 5, 2007, Mr. Wisner filed an application for permanent total disability compensation for injuries sustained in two separate work accidents at SLCP. After an evidentiary hearing, Judge Hann held that Mr. Wisner is entitled to a tentative finding of permanent total disability.

In challenging Judge Hann's decision, SLCP argues that Mr. Wisner's injuries are not compensable because the circumstances of his work accidents do not satisfy the more stringent test for legal causation that is applicable to his claim. SLCP also contends that, even if Mr. Wisner is entitled to benefits, his disability compensation must be reduced by 15% because he failed to obey a safety order from SLCP.

FINDINGS OF FACT

The Commission adopts Judge Hann's findings of facts. The following facts are relevant to the issues now before the Commission:

Prior to his employment by SLCP, Mr. Wisner suffered from back problems. These preexisting back problems contribute to Mr. Wisner's current injuries, for which he now claims workers' compensation benefits.

Mr. Wisner's first accident at SLCP occurred on July 2, 2002, as he moved a chlorine tank weighing between 250-300 pounds. Mr. Wisner performed this task by bracing his back against a wall and pushing the tank with his feet. As he did so, he felt immediate pain down his back and

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right leg, followed by numbness in the leg. He received medical care for this injury, including two back surgeries. On February 21, 2003, Mr. Wisner's physician imposed permanent work restrictions that limited Mr. Wisner from lifting more than 50 pounds.

After recovering from his first accident, Mr. Wisner was able to return to work for SLCP. His second accident occurred on May 6, 2005, as he was installing a 250-pound circulation pump at a swimming pool. This required Mr. Wisner to straddle the pump and then jockey it into position by jerking and sliding the pump into alignment with its couplings. He again experienced back pain and was diagnosed with an aggravation of his chronic back problems.

DISCUSSION AND CONCLUSION OF LAW

The Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. Utah Code Annotated § 34A-2-401. To qualify for benefits under the foregoing standard, an injured worker must establish, among other elements, that his or her work was the "legal cause" of the injury. *Allen v. Industrial Commission*, 729 P.2d 15, 25 (Utah 1986). The requirement of legal causation is explained in *Price River Coal Co. v. Industrial Commission*, 731 P.2d 1079, 1082 (Utah 1986):

Under *Allen*, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. **However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life."** . . . The requirement of "unusual or extraordinary exertion" is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted; emphasis added.)

Thus, there are two tests for legal causation. The first test applies to workers with no contributing preexisting conditions. In these cases, any work activity will satisfy the requirement of legal causation. Alternatively, the second test for legal causation applies when a worker does suffer from a preexisting condition that contributes to his or her work injury. In this second category of cases, legal causation is satisfied only if the worker shows that his or her work-related exertions were unusual or extraordinary when compared to exertions commonly experienced in modern nonemployment life.

Because Mr. Wisner suffered from a preexisting condition that contributes to his current back problems, his claim is subject to the second, more stringent, test for legal causation. SLCP argues that Mr. Wisner has failed to satisfy this more stringent test for legal causation because his work-related exertions-- moving a 250 to 300 pound chlorine tank in the first incident and lifting a 250-300 pound pump in the second incident--were not unusual or extraordinary. The Commission

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disagrees. It is not typical of modern nonemployment life for individuals to engage in the exertions that are necessary to move such heavy objects. The Commission therefore concludes that Mr. Wisner's work-related exertions in July 2002 and May 2005 are each sufficient to satisfy the more stringent test for legal causation.¹

As a final matter, SLCP argues that, even if Mr. Wisner is entitled to workers' compensation benefits, the amount of his disability compensation should be reduced by 15%. In making this argument, SLCP relies on § 34A-2-302(3)(a) of the Utah Workers' Compensation Act, which reduces an injured employee's disability compensation by 15% when the employee's injury is caused "by the willful failure of the employee . . . to obey any order or reasonable rule adopted by the employer for the safety of the employee" According to SLCP, the Commission should construe the lifting restrictions placed on Mr. Wisner by his treating physician as "an order of" SLCP, and should further conclude that Mr. Wisner's exertions in installing the circulating pump on May 6, 2005, were a "willful" failure to obey that "order."

Having carefully reviewed the record, the Commission is unconvinced that Mr. Wisner's efforts to perform his work duties can be fairly characterized as a "willful" failure to comply with his lifting restrictions. And, at least under the circumstances of this case, the Commission does not view the physician's restrictions as having been "adopted" by SLCP. Consequently, the Commission agrees with Judge Hann's conclusion that Mr. Wisner's compensation is not subject to reduction pursuant to § 34A-2-302(3)(a).

ORDER

The Commission affirms Judge Hann's decision and remands this matter to Judge Hann for further proceedings necessary to complete Mr. Wisner's claim for permanent total disability compensation. It is so ordered.

Dated this 4th day of March, 2008.

Sherrie Hayashi

¹ Because the Commission concludes that **each** of Mr. Wisner's accidents at SLCP satisfy the more stringent test for legal causation, it is unnecessary to address whether Mr. Wisner's second accident is merely an aggravation of the first accident and, as such, subject only to the less stringent test for legal causation.

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Utah Labor Commissioner

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.